

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:04cr307

THIS MATTER is before the Court upon motions of the defendant pro se requesting that the government be ordered to respond or show cause for its failure to file a motion for a reduction of the defendant's sentence pursuant to Federal Rule of Criminal Procedure 35(b).² (Doc. Nos. 23, 24).

The defendant asserts he was promised an additional sentence reduction under Rule 35 “should the additional information provided by the defendant prove availing to the Government.” (Doc. Nos. 23, 24: Motions at ¶ 4). The defendant believes his information has merited a further reduction, yet the government has not filed a motion. The Fourth Circuit has recognized that the government must initiate the process before a sentencing court may consider a reduction. United States v. Francois, 889 F.2d 1341, 1345 (4th Cir. 1989). Accordingly, the government retains the discretion as to whether and when to file a motion under Rule 35, and the Court will not direct it to forecast its intentions.

IT IS, THEREFORE, ORDERED that the defendant's motions are **DENIED**.

¹This Order corrects a typographical mistake in Doc. No. 25.

²It appears that the same or similar motion was docketed twice.

The Clerk is directed to certify copies of this order to the defendant, counsel for the defendant, to the United States Attorney, the United States Marshals service, and the U.S. Probation office.

Signed: April 17, 2008



Robert J. Conrad, Jr.
Chief United States District Judge
